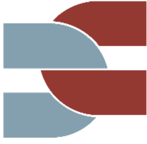

Brussels, 13th March 2023

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EACB comments on
EBA draft Guidelines on overall recovery capacity in recovery planning
(EBA/CP/2022/15)

General comments

The EACB welcomes the opportunity to comment on the EBA draft Guidelines (GLs) on overall recovery capacity in recovery planning.

We support the aim to continue improving crisis preparedness and set up a consistent framework for the operationalization and usability of recovery plans. At the same time we believe that recovery plans must preserve the institution specific dimension and expectations should be pragmatic.

In terms of timeline, we notice that no explicit application date is envisaged for the GLs and we understand that the EBA would see institutions starting to implement the fundamental elements before the GLs are actually applicable. We suggest instead to clarify that the new requirements and expectation for both institutions and competent authorities should apply only as of the next recovery planning cycle. Indeed, for institutions subject to an annual recovery planning update, the cycle starts already in Q1/Q2 by receiving the findings of the competent authority from the previous year. The work is then coordinated between multiple departments and the updated recovery plan is drawn up in early Q3 and, after quality checks and due process, signed off and submitted to the competent authority in Q4 (deadline which for some banks can be even fixed as early as Q3). In order to ensure legal certainty and to ensure a smooth process, we believe that application from the 2024 recovery planning cycle is key.

Answers to selected questions

Q2: Do you have any comments on the specification of the scenario severity for the purpose of calculating the 'scenario-specific recovery capacity'?

The draft EBA GLs mention in various instances that all scenarios need to reach the TSCR. Subsequently, the institution needs to recover within a period of, at most, 12 months. These requirements appear stricter than current regulation and would imply that well-capitalised banks would need to use even more severe scenarios than less well-capitalized banks, which would generate an uneven playing field among European banks. This is also difficult to align with the buffer usability concept.

A well-capitalized institution already has to apply severe shocks to force entry into recovery and has to go even beyond such (implausible) scenario to realise a breach of minimum (capital and/or liquidity) regulatory requirements. Apart from becoming more challenging to develop these scenarios, they become less credible and, in our opinion, such scenarios would induce resolution instead of a recovery situation.

In addition, these scenarios become even more challenging given that according to the EBA guidelines on Recovery Plan indicators (2021): "*Generally capital indicators should be calibrated above the combined capital buffer requirement*". After all, it seems unrealistic to build a scenario which may lead to the entry into recovery when capital indicators still remain above the combined buffer requirement, and which without recovery implementation and within a reasonable timeframe might decrease to levels below the TSCR. And on top of that, banks with higher regulatory buffers also need to identify more recovery options to return to OCR.

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Q3: Do you agree with the proposed criteria for the relevant starting point, timeframe (in particular with regard to the 6-month period for the LCR and NSFR) and representative indicators (in particular with regard to the explicit consideration of potential other/substitute indicators – e.g. MREL) for the calculation of the 'scenario-specific recovery capacity'?

According to para. 25 institutions "should calculate the effects of the implementation of their recovery options, for an impact on their capital (including leverage) position over a 12-month time horizon". We believe that this should be an indicative timeline rather than a prescriptive one. Transactions, such as the sale of subsidiaries and participations, may require a longer implementation period until they produce their full intended effect on the capital position after closing. A 15 or 18 months' time horizon would be appropriate in these cases.

According to para. 27, institutions should include numerator and denominator of the relevant indicators (CET1, TCR, LR, LCR, NSFR) in the recovery plan. While this does not seem to be the practice across all banks, we do not see the added value in this specification as these figures should already be available to the competent authority. In any case, if the figures are to be included in the recovery plan it should be ensured that no further breakdown in granularity would be expected in the future, as this would only impose additional burden on the banks without clear benefits for the supervisors.

Q6: Do you have any comments on the scope of the assessment of the 'scenario-specific recovery capacity' by the competent authorities?

According to para. 38, competent authorities should take into consideration, where appropriate and available, peer group analysis in several assessments, e.g. recovery options and their timeline and financial impact. We understand that this would be meant as a clarification for supervisors to see how the ORC could be adjusted, known that competent authorities already perform this type of analysis.

However, we would like to recall again that recovery planning must be institution' specific, this holds true even more for cooperative banks, given their specific business model and legal form.

Recovery planning should therefore remain a tailored task: peer group or a cross-institutional comparison cannot and should not lead to identify a deficiency of an institution's recovery plan. Indeed the ECB already takes this comparative dimension into account in the supervisory cycle, however we would like to stress that proportionality is key and there is no one-size-fits-all solution. If well-reasoned and credible in its ORC determination, there should not be the need to reopen the recovery plan just because peers have e.g. different or more recovery options.

Para. 38 could be amended as follows:

Competent authorities should take into consideration, where appropriate and available, ***and after taking account the proportionality dimensions specified under Art. 1 para 1 Directive 2014/59/EU*** *peer group analysis in order to facilitate amongst others:*
[…]
In the assessment according to Title 5 of these guidelines, non-conformity with the peer group should not in itself constitute a deficiency of the recovery plan.

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